



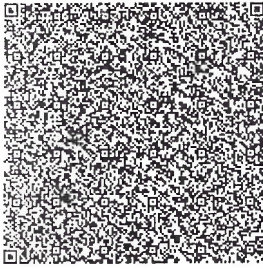
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of National Capital Territory of Delhi

#### e-Stamp

Certificate No. : IN-DL90998862070864Q  
Certificate Issued Date : 20-Feb-2018 05:08 PM  
Account Reference : IMPACC (IV)/ dl921303/ DELHI/ DL-DLH  
Unique Doc. Reference : SUBIN-DL92130385330153719831Q  
Purchased by : SANJAY KUMAR SINGH ARBITRATOR  
Description of Document : Article 12 Award  
Property Description : Not Applicable  
Consideration Price (Rs.) : 0  
(Zero)  
First Party : SANJAY KUMAR SINGH ARBITRATOR  
Second Party : Not Applicable  
Stamp Duty Paid By : SANJAY KUMAR SINGH ARBITRATOR  
Stamp Duty Amount(Rs.) : 100  
(One Hundred only)



Please write or type below this line.....

BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR  
IN DOMAIN NAME DISPUTE RESOLUTION POLICY.  
(INDRP)

IN RE:

Living proof, Inc  
Versus

Wen Delai

Complainant  
Respondent

Sanjay Kumar Singh  
10-02-18

#### Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

**BEFORE SHRI SANJAY KUMAR SINGH, SOLE ARBITRATOR,**  
**NATIONAL INTERNET EXCHANGE OF INDIA**  
**IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)**

**IN RE:**

**Living Proof Inc.**

301 Binney Street,  
 Cambridge MA 02142,  
 United States,

**Through authorized representative**

SILKA Law AB,  
 114 56 Stockholm,  
 Sweden, Strandvägen 7A  
 E-mail: disputes@silkalaw.com

COMPLAINANT

Versus

Wan Delai  
 Wan delai  
 Laifu shanzhuang, Gurangzhou  
 510000, China  
 +86.02083231289  
 E-mail: atname@outlook.com

RESPONDENT

**I. THE PARTIES:**

**A. THE COMPLAINANT:**

The Complainant in this proceeding is Living Proof, Inc. 301 Binney Street, Cambridge MA 02142, United States

**The Complainant's contact details are:**

Living Proof Inc.  
 301 Binney Street,  
 Cambridge MA 02142,  
 United States

**The Complainant's authorized representative in this administrative proceeding is:**

SILKA Law AB,  
 114 56 Stockholm,  
 Sweden, Strandvägen 7A

*Sanjay Kumar Singh*  
 16-03-18

E-mail: [disputes@silkalaw.com](mailto:disputes@silkalaw.com)

**B. THE RESPONDENT**

The Respondent (amended) in this administrative proceeding is

Wan Delai

Wan delai

Laifu shanzhuang, Gurangzhou

510000, China

+86.02083231289

E-mail: [atname@outlook.com](mailto:atname@outlook.com)

**II. THE DOMAIN NAME:**

"livingproof.in"

**III. The registrar with which the domain name is registered is:**

Endurance Domains Technology Pvt. Ltd. (R173-AFIN).

**Postal address:**

501, IT Building No 3,  
NESCO IT Park, NESCO Complex,  
Western Express Highway, Goregaon (East),  
Mumbai – 400063  
Maharashtra, India

Tel : +91 (22) 67209000

[compliance.manager@publicdomainregistry.com](mailto:compliance.manager@publicdomainregistry.com)

[compliance@publicdomainregistry.com](mailto:compliance@publicdomainregistry.com)

The language of the proceeding is English

**IV. Factual and legal Grounds:**

**The complainant's contentions:**

**V. Basis for the Proceeding is:**

The complainant has submitted that this Complaint satisfies the formal and legal requirements of the Policy and the Rules. The disputed domain name contains an Indian ccTLD giving a legal basis to the Proceeding. The complainant has further submitted that the Registrar is an accredited registrar of the IN Registry, therefore the registration

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agreement, **Annex 2** and (<https://publicdomainregistry.com/legal/>), pursuant to which the domain name is the subject of this Complaint is registered, incorporates the Policy. The complainant has annexed a true and correct copy of the domain name dispute policy that applies to the domain name in question as **Annex 3** to this Complaint.

## **VI. Factual and Legal Grounds**

This Complaint is based on the following grounds:

### **A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**

The complainant has submitted that the founders are hair stylists who were fed up with the limitations of conventional products and scientists from outside the beauty industry who were not confined by preconceived notions of what can and can't be done. The complainant has submitted that twenty patents, over 40 products, and more than 100 awards later, it has products that keep their promises and for changing lives in ways both big and small. The complainant has submitted that in 2012, the female actor Jennifer Aniston was signed as an investor and spokesperson in an attempt to make waves in the \$10 billion hair-care industry. The complainant has submitted that it has won over 130 awards from Marie Claire, Allure, SELF, Dr. Oz Show, Essence, People Stylewatch, O the Oprah Magazine, Ladies Home Journal, WWD and more. The complainant has placed reliance on **Annex 4** for more information about the Complainant. The complainant has submitted that Complainant is also visible in several social media channels such as Facebook, Youtube, Pinterest, Twitter, and Google+.

<https://www.facebook.com/livingproofinc>

<http://www.youtube.com/user/livingproof>

<https://www.pinterest.se/livingproofinc/>

<https://www.instagram.com/livingproofinc/>

<https://twitter.com/livingproofinc>

<https://plus.google.com/+Livingproofinc>

The complainant has submitted that it owns and communicates on the internet through various websites worldwide and has registered numerous of domain names similar to the trademark LIVING PROOF and similar to the Domain Name, to name a few. The complainant has placed reliance on **Annex 5**, [livingproof.com](http://livingproof.com), [livingproof.us](http://livingproof.us).

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The complainant has submitted that it holds numerous of trademark registrations corresponding to LIVING PROOF but for the purpose of this dispute please it has relied on the International Trademark Registration for the word mark LIVING PROOF with registration number 967762 registered on June 24, 2008 which is designated to China the country where the Respondent resides. The trademark was registered more than five years before the dispute domain name was registered and placed reliance on **Annex 6**.

**IDENTICAL OR CONFUSINGLY SIMILAR:**

The complainant has submitted that the domain name **livingproof.in** ("hereinafter referred to as the Domain Name") was registered on February 21, 2013 and directly and entirely incorporates Complainant's well-known trademark coupled with the country code "co.in". The complainant has further submitted that the Domain Name would be perceived by internet users as descriptive of a website where they could find information about Complainant's well-recognized products. The complainant has relied on the case *Morgen Stanley U.S.A. v. Bharat Jain, U.S.A.*, INDRP Case No. 158 where the Complainant argued that the county code co.in is insufficient to render the domain name dissimilar, and the Arbitrator stated the identical character of the domain name. Based on the above, the Domain Name is regarded to be identical to Complainant's registered trademark.

**B. The Respondent has no rights or legitimate interests in respect of the Domain Name;**

The complainant has submitted that it has not found that the Respondent is commonly known by the Domain Name. The WHOIS information is the only evidence in the WHOIS Lookup record which relates the Respondent to the Domain Name. The complainant has submitted that it identifies the registrant as Wan Delai which is not similar to the Domain Name. When entering the terms in Google.in search engine, the returned results point to Complainant and its business activity. The complainant has placed reliance on **Annex 7**. The Respondent could easily perform a similar search before registering the Domain Name and would have quickly learnt that the trademarks are owned by Complainant.

The complainant has submitted that there is no evidence that the Respondent has a history of using, or preparing to use, the Domain Name in connection with a bona fide offering of goods and services. It is clear that the Complainant has become a

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distinctive identifier associated with the term "LIVING PROOF" and that the intention of the Domain Name is to take advantage of an association with the business of Complainant.

The complainant has submitted that it the Domain Name is pointing to a parking page provided by the registrar which is permissible if the Respondent use the Domain Name for any lawful purpose. The complainant has relied on **Annex 8**. The complainant has submitted that the Domain Name resolves to a website that provides links to haircare, of which some are directly referencing the Complainant but also links to competitor such as Wella. There is also a link at the top of the website which says that *"This domain name might be for sale"*. Complainant presumes Respondent receives pay-per-click (PPC) revenue for these links. The Respondent has made no claims to neither having any relevant prior rights of its own, or to having become commonly known by the Domain Name. The complainant has submitted that clearly, the Respondent is not known by the Domain Name, nor does the Respondent claim to have made legitimate, non-commercial use of the Domain Name. In addition, Complainant's brand LIVING PROOF has an extensive and long term use worldwide and significant amount was spent on establishing LIVING PROOF brand and goodwill. The complainant has submitted that therefore, the use of a parked webpage with related links to the LIVING PROOF brand causes confusion in the public. The complainant has placed reliance on the Case No. INDRP/670 *Teradata Corporation v/s Virginia Cross <teradata.in>*, as in the present case, the Respondent has listed the Domain Name for sale. The Panel stated that "The Respondent's website is not bona fide since the Respondent is riding over the reputation of the Complainant's trademark "Teradata". Thus, The Respondent is not using, nor demonstrated any preparation to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with bona fide offering of goods and services". As per the complainant the same argumentation should be adopted in the current case.

The complainant has submitted that the pay-per-click landing page contains links to ads that relate at least in part to a trademark. Those who register domain names in large numbers for targeted advertising through automated programs and processes must make reasonable good faith efforts to avoid registering and using domain names that are identical or confusingly similar to marks held by others. The complainant has submitted that although there is nothing illegitimate per se in using the Domain Name parking service, it has been previously established that

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linking a domain name to such service, with a trademark owner's name in mind, and in the hope and expectation that internet users searching for information about the business activities of the trademark owner will be directed to that parking service page, is a different matter and does not provide a legitimate interest in that domain name under the WIPO Policy. The complainant has relied on WIPO Case No. D2007-0267 *Express Scripts, Inc. v. Windgather Investments Limited / Mr Cartwright*, and WIPO Case No. D2007-1143, *Owens Corning v. NA*). The current page displays PPC links and are related to Complainant's trademark and it is in the direct control of the Respondent to disable the PPC service. The complainant has submitted that in the current case, the use of PPC leads to the conclusion that the Respondent has intentionally attempted to attract internet users to its websites with the only intent of commercial gain, therefore to mislead consumers and to tarnish the trademark of the Complainant.

The complainant has submitted that finally, the Respondent has been granted an opportunity to present some compelling arguments that it has rights in the Domain Name but has failed to do so. The complainant has submitted that additionally, the Respondent has had ample time to activate the website since its time of registration but the Domain Name is still parked which demonstrates further non-legitimate use of the Domain Name.

**C. The Domain Name was registered or is being used in bad faith.**

The complainant has submitted that as above mentioned, the Complainant's trademarks predate the registration of the Domain Name on WHOIS Lookup record therefore it seems to be unlikely that the Respondent was not aware of the unlawful registration of the Domain Name.

The complainant has further submitted that since the registration of the Domain Name, it currently resolves to a parked website – as shown by a copy of the home page annexed by the complainant as **Annex 8**.

The complainant has submitted that it has to be highlighted that the Respondent has a relatively large portfolio of domain names and when conducting a reverse whois record on the Respondent, it discloses that the Respondent has also registered domain names such as *moxtra.co.in*, *moxtra.in*, *tongal.co.in*, *tongal.in*. These domain names infringes the trademarks **MOXTRA** and **TONGAL**. The complainant has placed reliance on **Annex 9** for whois extracts and corresponding trademarks.

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The complainant has submitted that in the *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003 the Panel established that the registration and passive holding of a domain name which has no other legitimate use and clearly references the Complainant's trademark may constitute registration and use in bad faith. In the current case it is clear that the Respondent has registered the Domain Name in bad faith by intentionally adopting Complainant's widely known marks in violation of Complainant's rights. Panels have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith, but all circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. In the current case, examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark, no response to the cease and desist letter has been sent.

The complainant has submitted that the confusingly similar nature of the Domain Name to the Complainant's trademark, the lack of any explanation from the Respondent as to why he registered the Domain Name of a well-known brand all over the world indicates bad faith registration. Moreover, Respondent registered the Domain Name in 2013 and has had ample time to activate the Domain Name to demonstrate that the use would not constitute bad faith use. The complainant has finally submitted that, Complainant's international trademark registration predates Respondent's Domain Name registration and it is highly unlikely that the Respondent was not aware of the rights Complainant has in the trademarks and the value of said trademark, at the point of the registration. Consequently, the Respondent should be considered to have registered and to be using the Domain Name in bad faith.

**RESPONDENT'S RESPONSE TO FACTUAL AND LEGAL ALLEGATIONS  
MADE IN COMPLAINT:**

**The disputed domain name is not identical or confusingly similar to a mark in which Complainant alleges enforceable rights:**

*Sanyan Ligh*  
*10-03-18*



The respondent has submitted that the Complainant's trademark status at India all are Opposed status (Annex-1), obviously, before the disputed domain name was being registered, the Complainant did not register trade/service mark in India. So, before the disputed domain name was being registered, the Complainant does not have any civil rights in India.

1. The respondent has submitted that before the disputed domain name was being registered, the influence power of the service provided by the complainant is very small, almost no one know them in India.
2. The respondent has submitted that the disputed domain name was being registered at 21-Feb-2013. The Complainant use their current influential to prove how famous they are five years ago, it is obviously so absurd. The Complainant use the Google search results of now to prove its influence power at the time the disputed domain name being registered in their complaint is also absurd and unscientific.
3. The respondent has submitted that before the disputed domain name was being registered, the Complainant did not provide the evidence that they setup up an office in India.
4. The respondent has submitted that before the disputed domain name was being registered, the complainant did not provide evidence of its advertising in India.

The respondent has contended that the Complainant does also not provide the evidence that it started their services in the India before the disputed domain being registered.

The respondent has further contended that Complainant does also not provide the evidence that it is started an office in the India before the disputed domain being registered.

The respondent has further contended that Complainant does also not provide the evidence that they started some advertising in the India before the disputed domain being registered.

The respondent has further contended that the evidences submitted by the Complainant could not indicate that the word "living proof" had been established in a bit of association with the Complainant in the India before 21-Feb-2013, the time of the disputed domain being registered.

The respondent has further contended that though it does not require that register the trademark in India in the INDRP to protection the rights of its trade mark

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registered in other country, but if it is not a well-known trade mark, it at least must have a certain reputation in India or started its service in India or started an office in India or make some advertising in India. All these above, the Complainant do not show any evidence that they do it. Almost no one knows the Complainant at the time before the disputed domain being registered.

The respondent has submitted that the Complainant can't use the word "livingproof" in the world exclusively including the Respondent, because there are many other people have registered the trademark with the word "livingproof" (Annex-2). All the other trademark owner and the Respondent and other people can register the domain name.

The respondent has further submitted that the Complainant has no exclusive trade mark/services rights in the India before the time of the disputed domain being registered.

**B. Respondent has rights and legitimate interest in the disputed domain name.**

1. The respondent has contended that "livingproof" is a commonly used word combination made up of living and proof, and it is being created by Respondent.
2. The respondent has contended that the word "livingproof", the Complainant have a trademark, but others have also registered the trademark, and the Complainant could not monopolize the word. (Annex-2)
3. The respondent has contended that although the Respondent has no trademark, but the registration principle of domain name is "first register, first service". From this point of view, the Respondent registered the domain name first, they naturally had the rights and made the domain name's legal right to use.
4. The respondent has contended that the trademark Complainant owned is not a well-known trademark.
5. The respondent has contended that he did not prevent the complainant registering the domain name before the Respondent registered the domain name. It is true that the Complainant, including the other trademark holders, has given up the domain name registration right. If the Complainant are willing to register, it can do it as soon as it registers the livingproof.com. But why they did not do it, because the Complainant is an American company, its service is just at the USA, Not in the India.
6. The respondent has contended that before the Respondent registered the domain name, there are five years after they registered a trademark in the USA,

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why the Complainant did not register the domain name for such so long a time, apparently, the Complainant would not like to use the domain name, they give up his own rights.

7. The respondent has contended that if the Complainant want to use the domain name now, they should buy the domain instead of using this reverse plunder.
8. The respondent has contended that if livingproof.in is being awarded to the Complainant, it is obviously unfair to the Respondent and other trademark owners.

**A. The disputed domain name was not registered or used in bad faith.**

1. The respondent has contended that before the Respondent registered the disputed domain name, the Respondent did not know the existence of the Complainant at all. The Respondent registered the domain name according to the word combination.
2. The respondent has contended that he is currently parked domain name, this can bring him some meagre income. However, the content of parking site is automatically generated by the domain name parking merchant and is not controlled by the Respondent.
3. The respondent has contended that if the Complainant claimed that these parking contents mislead consumers and infringe the Complainant's right, the Complainant can request the Respondent to stop parking the domain name, or ask the Complainant and the parking company to change the parking contents or the Respondent may cancel the parking instead of going to rob the domain name.
4. The respondent has contended that the other domain names registered by the respondent have nothing to do with the case, but the respondents registered the domain name based on the word combination.
5. The respondent has contended that register many domain names is legitimate and justified, and the Respondent do never infringe on anyone's trademark. And there are many domain name investors registered many domain names. Google also registered a lot of domain names (Annex-3). Are they all cybersquatting? The Complainant's accusation is not justified, it is entirely the result of his own imagined.

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**The Complainant's behaviour is being suspected "Reverse Hijacking".**

The respondent has submitted that "Because who have the right to use the domain name included both the Respondent and other trademark holders. The rights of the Complainant are not strong enough for them to get the domain name". They only rely on the time they registered the domain name livingproof.com earlier then the disputed domain name being registered. The Respondent has reason to believe that the complainant's behaviour is suspected "Reverse Hijacking".

**RESPONDENT'S SUBMISSIONS:**

1. The respondent has submitted that before the disputed domain being registered, though the Complainant register a trade mark in the USA, but at that time it is not a well-known mark.
2. The respondent has submitted that the complainant did not register an office in India, and has not carried out the relevant business activities in India, and almost no one knows in India.
3. The respondent has submitted that if Someone do not do any advertising campaign and business activities in the India, just rely on a trademark of USA, but the mark was almost no one knows at that time to prevent other people to register the domain. Who dares to registered and used the .in domain names.
4. The respondent has submitted that the mark is not valid in this case, and the Complainant can't prevent the Respondent registered the domain according to "first come, first registration" principle. Apparently, it is not satisfied with the condition of *paragraph 4(i)* at the INDRP.
5. The respondent has submitted that the Respondent have no intention to sell the disputed domain, and did not contact anyone to sell or rent the domain to others including the Complainant. The Respondent just parked the domain, but the park site content is generated by the park site. Apparently, it is not satisfied with the condition of *paragraph 6(i)* at the INDRP.
6. The respondent has submitted that he did not block the Complainant to register the disputed domain, it is the Complainant abandon the register themselves. Apparently, it is not satisfied with the condition of *paragraph 6(ii)* at the INDRP.

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7. The respondent has submitted that apparently, the disputed domain name was not registered or used in bad faith. And it is not satisfied with the condition of paragraph 4(iii) at the INDRP.

The Respondent has requested the panel to dismiss the complainant's complaint request. Only on this way, it is fair to the *Respondent* and all other trademark holders.

#### AWARD

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's disputed Domain name **livingproof.in**.
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. On 12-01-2018, I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *SEVEN* days from receipt of the notice.
6. On 20-01-2018 I again called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence within *SEVEN* days from receipt of the notice.
7. On 24-01-2018 the respondent submitted the response to the complainant of the complainant
8. On 02-02-2018 I informed the complainant about the response submitted by the Respondent and directed the complainant to file the rejoinder to the response of the respondent.

#### OPINION AND FINDINGS ON MERITS

##### A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names

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also. In the said case the words, 'Sify' & 'Siffy' were held to be phonetically similar and addition of work 'net' in one of them would not make them dissimilar. It is held in Indian case **JT.2004 (5) SC 541**, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

Now the other important aspect that needs consideration is, as to whether the complainant has legitimate right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark on the said domain name and has no affiliation with the trademark. Considering the complainant's submission that the domain name **livingproof.in** was registered on February 21, 2013 and directly and entirely incorporates Complainant's well-known trademark coupled with the country code "co.in". The complainant has rightly contended that the Domain Name would be perceived by internet users as descriptive of a website where they could find information about Complainant's well-recognized products. The complainant has also relied on the case *Morgen Stanley U.S.A. v. Bharat Jain, U.S.A.*, INDRP Case No. 158 where the Complainant argued that the county code co.in is insufficient to render the domain name dissimilar, and the Arbitrator stated the identical character of the domain name. Based on the above, the Domain Name is regarded to be identical to Complainant's registered trademark

The complainant has submitted that it owns and communicates on the internet through various websites worldwide and has registered numerous of domain names similar to the trademark LIVING PROOF and similar to the Domain Name, to name a few. The complainant has placed reliance on **Annex 5**, [livingproof.com](http://livingproof.com), livingproof.us.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical. Thus the conclusion is that the domain name of respondent is identical and confusingly similar to the trademark of complainant.

This principle is settled in many Indian cases and referred cases **JT 2004(5) SC 541 and 2004(5) SCC 287**. The complainant has made submission that he has legitimate international trademark, he is using trademark for many years

Thus the conclusion is that the domain name "**livingproof.in**" is identical and confusing similar to the trademark of complainant "**LIVING PROOF**" and the complainant has right in the trademark.

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**B) Whether the respondent has no right or legitimate interest in the domain name got registered by him**

The paragraph 4(ii) of INDRP is to read with paragraph no.7. As already stated that paragraph 4(ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct cogent and positive evidence which are in his special knowledge and power.

In the instant complaint the complainant has made positive assertions that respondent has no legitimate right in domain name and there is no evidence of its use and the respondent has no trademark on the domain name neither he has affiliation with it in India. The complainant has made positive assertions regarding the fact that respondent has got registered various other domain names, in the .IN Registry for which the respondent has no right or trademark. The respondent has got registered various domain names as are already mentioned above. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has failed to provide any positive, cogent and specific evidence that he is known or recognized by domain name, by its user and that he in fact uses it for providing goods or services. The respondent has neither put forth nor provided such evidence. The assertion of complainant is that the respondent at time of registering his domain knew or ought to have known about his trademark and so he has violated complainant's right. Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

**Whether the respondent's domain name has been registered or is being used in bad faith**

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant. The complainant has alleged that the respondent has got registered the domain name for selling it and that he also hijacks domain name to sell it for a profit. The complainant has also asserted that the main object of registering the domain name **livingproof.in** by the Respondent is primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner and registrant of the trademark **LIVING PROOF** Or to a competitor that of Complainant,

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for valuable consideration in excess of documented out of pocket costs directly related to the domain name.

Further by using the said domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

Keeping in view above facts and circumstances and in view of the complaint, the response of the respondent it is thus clear that the respondent has registered domain name and he has not provided any substantial evidence of using them for business or for offering of goods and services. The obvious purpose for registering domain names is to sell, rent or transfer it or to prevent other owner of mark from reflecting it in corresponding domain name. Thus the conclusion is that the respondent has got registered his domain name "**livingproof.in**" in bad faith.

In view of above facts of the complaint, the response of the respondent, the law of the land and the case laws as discussed above it is clear that the complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him.

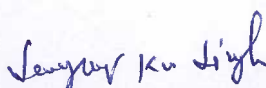
#### RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith, as such he is not entitled to retain the domain name. The respondent also does not have right or legitimate interest in the domain name. The complainant is entitled for transfer of domain name "**livingproof.in**" as it has established its bonafide rights in trademark. Hence I direct that the Domain name be transferred to the complainant by the registry.

No order as to costs.

Delhi

Date: 10-03-2018.

  
(Sanjay Kumar Singh)

Arbitrator